



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

THE JOURNAL OF POLITICAL ECONOMY

VOLUME 29

October 1921

NUMBER 8

THE ECONOMICS OF AMERICAN PENOLOGY AS ILLUSTRATED BY THE EXPERIENCE OF THE STATE OF PENNSYLVANIA

I. GENERAL NEGLECT OF THE ECONOMIC ASPECTS OF PENOLOGY

While no one would be rash enough to contend that the economic phases of the penal institutions of this country are of anything like as much importance as the economic life and activities of the non-criminal population, still it can be safely maintained that they have been unduly and unfortunately ignored. In spite of the fact that the prison population of this country has been numbered by the tens of thousands and the expenditures for maintenance have totaled many millions of dollars, there exists no adequate history or analysis of the economics of American penology.¹ This article has been planned in the effort to present a clear summary of the more significant tendencies in the economic evolution of American

¹ This statement does not imply the ignoring of the various statistical cross-sections of prison industry taken from time to time by federal and state agents. Brief surveys of the industrial systems of state prisons, as they have developed in two representative states, are contained in Philip Klein, *Prison Methods in New York State*, chaps. viii-ix; and H. E. Barnes, *History of the Penal, Reformatory, and Correctional Institutions of New Jersey*, pp. 60 ff., 69 ff., 99 ff., 124 ff., 141 ff., 174 ff., 378 ff., 467 ff., 493 ff., 541 ff.

penology, considered particularly in its relation to the general progress of American industrial society.

The state of Pennsylvania has been chosen for this study because it exemplifies more fully than any other the diverse tendencies in the economic development of American penal institutions. As the originator of one of the three great historic types of prisons—the Pennsylvania system of solitary confinement—this state has also experimented with the Auburn system and, in a modified way, with the Irish system. Not less varied has been its industrial experience. It is doubtful if any other state can present as comprehensive a recapitulation of all the phases of the evolution of prison industry in America as Pennsylvania. Beginning as the originator, not only of labor in solitary confinement, but also of the very idea and practice of prison labor, Pennsylvania has followed all of the leading trends in prison industry in the nineteenth century. The Eastern Penitentiary has furnished the best example of the persistence of the handicraft stage and the solitary-labor plan, which endured almost unimpaired to 1913. This was, no doubt, the most perfect illustration of the survival of the original methods of prison industry to be found. In strange contrast with the continuity and conservatism of the Eastern Penitentiary, the Western Penitentiary flirted with nearly all of the prevailing trends in prison industry in the last century. Starting like the Eastern Penitentiary with solitary labor along handicraft methods and conducted commercially by the public-account system, the Pittsburgh institution turned to a complete adoption of the congregate-factory contract system in the seventies and eighties. In the mid-eighties the public-account system was again brought back, this time with the congregate system. Finally, in the last decade, both the state-use and the public-works-and-ways systems have been adopted in part, thus completing all of the forms of industrial administration with which it has been possible to experiment. Not less typical and comprehensive has been Pennsylvania's experience with state interference in the field of prison labor. There was complete freedom in industrial initiative for nearly a century. In the late seventies labor organizations began to oppose contract convict labor and political leaders were not deaf to their

importunities. Beginning in 1883, a series of restrictive laws were passed which, by 1897, had achieved the almost complete extinction of prison industry in Pennsylvania. On the other hand, since 1915 the state has made at least some slight effort to make amends for past mistakes by introducing, without any paralyzing restrictions, the more modern methods of controlling prison labor.

2. THE ORIGINS OF PRISON INDUSTRIES IN PENNSYLVANIA

Pennsylvania shares with the Quaker province of West Jersey the honor of having originated the system of imprisonment at hard labor as the prescribed punishment for criminal action. In his significant legislation of May, 1682, Penn designated imprisonment as the prevailing punishment for crime and stipulated that "all prisons shall be workhouses."¹ It is believed that Penn was influenced by a personal study of the workhouses for vagrants and juveniles then in operation in Holland. Owing to the friction with the Crown in establishing a colonial court system, Penn's code was soon abrogated and his aspirations received little application in the provincial period,² but they served as the precedent for action as soon as British influence was removed in 1776, and were applied in the series of progressive enactments from 1776 to 1829 which established the modern prison system in the United States.³

The practical origins of prison employment in the United States are to be found in the provision of the Pennsylvania constitution of 1776, suggesting that imprisonment at hard labor be utilized in the punishment of all crimes not capital.⁴ This exhortation was given legal force by an act of September 15, 1786, ordering the punishment of prisoners by "continued hard labor, publicly and disgracefully imposed."⁵ The prisoners were to be employed

¹ *Charter and Laws of Pennsylvania*, 1682-1700, pp. 99 ff.

² W. R. Shepherd, *History of Proprietary Government in Pennsylvania*, pp. 361-67, 388-89.

³ *Sketch of the Principal Transactions of the Philadelphia Society for Alleviating the Miseries of Public Prisons*, 1859; William Bradford, *An Enquiry How Far the Punishment of Death Is Necessary in Pennsylvania*, 1793. Cf. *Journal of Criminal Law and Criminology*, May, 1921, pp. 35 ff.

⁴ *Constitution of 1776*, chapter ii, section 39.

⁵ *The Statutes at Large of Pennsylvania*, XII, 280 ff.

in the gaols and workhouses, in the repairing and cleaning of streets and highways, and in "such other hard and laborious work within the county" as the courts should direct. Though this experiment failed through disciplinary defects, it is interesting as perhaps the first example of extramural employment of prisoners, which, after being abandoned for a century, has been revived and made the prevailing method of prison industry in the more progressive institutions.

The failure of the experiment with extramural employment led to the passage of an act of March 27, 1789, directing that the prisoners be set to work in prison workshops.¹ It was strengthened by an act of April 5, 1790, which, with a minor amendment of April 18, 1795, governed the conduct of prison industry until the passage of an act of April 23, 1829, and the consequent introduction of labor into the newly opened state penitentiaries. This important act of 1790 declared that the convicts "shall be kept, as far as may be consistent with their sex, age, health, and ability, to labor of the hardest and most servile kind in which the work is least liable to be spoiled by ignorance, neglect, or obstinacy and where the materials are not easily embezzled or destroyed."² The convicts were to be employed every day except Sunday for eight hours per day in November, December, and January; for nine hours in February and October; and for ten hours during the remainder of the year.³ The keeper of the Walnut Street Jail, with the consent of two inspectors, was authorized to provide the stock and implements for the labor of the convicts and to make contracts for the sale of the manufactured articles. In addition to his salary, the keeper was to receive a commission of 5 per cent on all sales of prison-made goods.⁴ The convicts were also to receive a special stimulation to industrial exertion. It was enacted that, "in order to encourage industry as an evidence of reformation," separate accounts should be opened with all prisoners sentenced to hard labor for six months or a longer period. They were to be charged with the cost of their clothing, maintenance, and the raw material used in their labor, and to be credited with

¹ *Ibid.*, XIII, 243-51.

³ *Ibid.*, pp. 517-18.

² *Ibid.*, pp. 516-17.

⁴ *Ibid.*, pp. 518-19, 521.

the proceeds of the sale of their manufactured products. If there was any excess above the costs, it was ordered that the prisoners should receive one-half of this "to be laid out in decent raiment for such convicts at their discharge or otherwise applied to their use and benefit as the said inspectors shall upon such occasions direct."¹

During the first years after 1790 the industrial system then established developed with unusual success, but the overcrowding of the Walnut Street Jail led to the paralyzing of both prison discipline and industry. By 1825 the income from labor did not meet more than 10 per cent of the total cost of operating the institution, and not more than one-tenth of the population was permanently or uniformly employed.² The collapse of the penal system in the Walnut Street Jail at Philadelphia led to the demand for state penitentiaries. Provision for these was made in laws of 1818 and 1821; the Western Penitentiary was opened at Allegheny in July, 1826, and the Eastern Penitentiary at Cherry Hill in Philadelphia in October, 1829.³ So great a reaction in penological opinion had set in that the Western Penitentiary was erected to segregate the prisoners without any provision whatever for labor, and the law of April 23, 1829, directing the introduction of prison labor in the state penitentiaries, was secured only through active lobbying at the state capitol by Philadelphia reformers.⁴ The act of 1829 has remained the general basis of the legislative regulation of prison industry, though, as will appear later, subsequent legislation of a restrictive sort has practically acted to abrogate it.

3. THE NATURE OF PRISON INDUSTRIES IN PENNSYLVANIA

The earliest type of industries carried on in the Walnut Street Jail after 1790 were nail-making, stone-sawing, shoemaking, weaving, and the picking over and carding of wool and hair. The work was done for contractors who furnished the raw material

¹ *Ibid.*, p. 519.

² *Report of the Commissioners on the Penal Code*, 1828, pp. 172-79.

³ *Acts of the General Assembly*, 1817-18, pp. 138-40; 1820-21, pp. 94-97.

⁴ *Laws of the General Assembly*, 1828-29, pp. 341-54; *Journal of Prison Discipline and Philanthropy*, Vol. I, No. 1, pp. 1-12.

and paid a stipulated amount per unit of product. In addition to this, the inmates made their own shoes and clothing.¹ From the period of the establishment of the industrial systems of the state penitentiaries in 1829-30 until the outbreak of the Civil War, weaving and shoemaking (cordwaining) were by far the most important industrial operations undertaken. Subordinate and relatively unimportant accessory industries were picking oakum, cane-seating of chairs, blacksmithing, and tailoring.² In the decade of the fifties, with the development of mechanical weaving outside, the handicraft prison weaving declined somewhat and the cane-seating of chairs gained in relative importance. The following table of the employment assigned to the 580 prisoners admitted between 1855 and 1859 will give an adequate picture of the industries of the Eastern Penitentiary just before the Civil War.³ The occupational distribution in the Western Penitentiary was practically the same.

| | |
|---------------------------|-----|
| Weaving and spinning..... | 163 |
| Shoemaking..... | 162 |
| Cane-seating chairs..... | 137 |
| Chair-making..... | 21 |
| Varnishing..... | 8 |
| Segar [sic!]-making..... | 4 |
| Boot-crimping..... | 3 |
| Broom-making..... | 3 |
| Burnishing..... | 3 |
| Blacksmithing..... | 1 |
| Domestics..... | 75 |
| Total..... | 580 |

These industries were all carried on according to a handicraft technique and were well adapted to the individual-cell method of labor which prevailed in the Pennsylvania system during this period. The physician of the Eastern Penitentiary complained,

¹ Caleb Lowmes, *An Account of the Alteration and Present State of the Penal Laws of Pennsylvania*, 1792, pp. 14-15, 20; *Report of the Commissioners on the Penal Code*, 1828, pp. 52, 172-79.

² *Senate Journal*, 1833-34, pp. 417-18; *ibid.*, 1838-39, pp. 761, 771; *Annual Report of the Inspectors of the Eastern Penitentiary*, 1850, pp. 9-10; *ibid.*, 1860, p. 20.

³ *Annual Report of the Inspectors of the Eastern Penitentiary*, 1860, p. 20.

however, that they were for the most part sedentary occupations which were "proverbially deleterious," especially as there were no provisions for adequate outdoor exercise.¹

The Civil War period produced a revolution in prison industries. The progress of mechanical weaving outside the walls and the inability to introduce power looms into the cellular methods of manufacture caused weaving gradually to die out in the Eastern Penitentiary. Further, the authorities in the Western Penitentiary succumbed to the temptation to follow the new mechanical methods, gave up the idea of solitary confinement in 1869, adopted the new machine technique, and applied it in the congregate shops such as had characterized the Auburn system of prison administration since 1824. The Eastern Penitentiary clung doggedly to cellular confinement and handicraft methods until 1913. Hence, the industrial situation in the two Pennsylvania state penitentiaries has been less uniform and homogeneous since 1860 than before. In the Eastern Penitentiary weaving by hand was unable to meet the competition with mechanical weaving outside, gradually decreased in importance, and by the close of the sixties had become a minor industry. Shoemaking increased in importance and was the chief industry of the institution until its final slump late in the eighties. In this decade the manufacture of hosiery forged to the front and has been the leading industry in the Eastern Penitentiary since that time. The cane-seating of chairs has remained an industry of major importance since the fifties. Cigar-making has also been of considerable significance, particularly from 1873 to 1887 and since 1903. In the Western Penitentiary weaving became less important in the seventies and shoemaking became far the most productive industry from 1870 to 1887. The manufacture of heavy cocoa mats was begun in the eighties and has been much the most important industry since 1887. The manufacture of hosiery has been a major industry since 1895. Broom-making has also been a significant source of revenue since 1875. There was a period of special activity in making chains and heavy hardware from 1879 to 1885. Since the opening of the great farm at the Rockview site for the new penitentiary in 1916,

¹ *Ibid.*, 1849, pp. 20-21.

construction work and farming have been the leading occupations of those assigned to the Western Penitentiary for incarceration.¹ The uniformity of economic development and industrial continuity have been disrupted by legislation restricting, first contract convict labor and, since 1879, all types of prison industry. This legislation has particularly affected the Western Penitentiary with its congregate shops and contract convict labor.

The types of industries and accompanying technique and industrial discipline in Pennsylvania have thus in a general way illustrated the industrial evolution in both the country at large, and in penal institutions. The individual, cellular, handicraft system has persisted from the beginning in the Eastern Penitentiary with little change. The Western Penitentiary has reflected the development of the machine technique and the factory system. The development of extramural employment in construction work and farming since 1916 seems to foreshadow what is likely to be the most important type of penal industry in the future.

4. THE METHOD OF INDUSTRIAL ADMINISTRATION

Any historical account of the systems of industrial administration or prison employment should be preceded by a summary of the different types of industrial administration which have prevailed in this country. The official classification and description follows:

1. *The leasing of the person and labor of the convicts.*—Under this system the contractors assume entire control of the convicts, including their maintenance and discipline, subject, however, to the regulations fixed by statute. In general, the prisoners are removed from the prisons and are employed in outdoor labor, such as mining, agriculture, railroad construction, etc., though manufacturing is sometimes carried on. The nature and duration of the employment are, within the restrictions of the law, fixed by the lease.

2. *Leasing or contracting for the labor of the prisoners.*—The employment under this system is usually within the prison shops

¹ Concrete data upon which these generalizations are based have been drawn from a study of the *Annual Reports* of the Eastern and Western Penitentiaries and of the Secretary of the State Board of Charities.

or yards, discipline and control remaining in the hands of the officers, only the labor of the convicts being let to and directed by the contractors for manufacturing purposes. The state usually furnishes shop room and sometimes also provides power and machinery.

3. *The piece-price form of the contract system.*—Not only the discipline of the convicts, but the direction of their labor as well, is retained by the state under this system, the contractors furnishing the material to be made up and receiving the finished product, an agreed price per piece being paid for the labor bestowed.

4. *The public-account system.*—There is no intervention of outside parties under this system, the employment of the convicts being in all respects directed by the state, and the products of their labor being sold for its benefit.

5. *The state-use system.*—This system is similar to the above, except that such articles are produced as will be of service to the state in supplying and maintaining its various institutions, and are appropriated to such use instead of being put on the general market.

6. *The public-works-and-ways system.*—Under this system convicts are employed in the construction and repair of public streets, highways, and other public works.¹

The first system has few or no defenders among penologists and sociologists, and is no longer found in any progressive state or penal institution. Its advantage was that it relieved the state of the burden of caring for the prisoners, but this was more than offset by the impossibility of safeguarding the treatment of the convicts and maintaining any program of reformation and education. Some of the most atrocious evils of prison labor have existed under this system in the chain gangs used for construction work and in the turpentine camps of the South. The second type, the most usual form of contract convict labor, freed the prison of industrial responsibility and possessed the advantage over the lease system of allowing the prison authorities to exert a more active supervision of the treatment of the convicts. The arguments against it were chiefly that emphasis was likely to be laid upon

¹ *Senate Document*, No. 494, Sixty-third Congress, Second Session, p. 10

productive efficiency rather than reformation and industrial training, and that this convict labor constituted an unfair type of competition with free labor outside the prison. The piece-price system has been regarded as more desirable than the contract system, because it permits complete control of the convicts by the prison authorities. The main objection advanced against it has been the competition which it produces with outside labor. The public-account system, likewise, has been criticized because prison-made products compete in the market with goods made outside. The state-use system has been devised to find a channel for the sale of prison-made products which will reduce to a minimum competition with outside goods, and will, at the same time, allow the state institutions to obtain commodities at a relatively low cost to the state. The public-works and-ways-system is but the application of the state-use principle to the extramural employments of convicts. While the state-use system has quite generally come to be regarded as the most satisfactory method of controlling prison labor, it has rarely been found successful unless the purchase of prison-made products, when available, has been made compulsory with state institutions. In the following summary of the experience of Pennsylvania with some of these systems no further attempt will be made to consider their merits, except in so far as this is done by presenting the views of the prison authorities who attempted to apply them.

As has been pointed out above, the act of April 5, 1790, contemplated the introduction of what is technically known as the state-, public-, or prison-account system.¹ Primarily because no adequate supply of capital was provided for the installation of the public-account system, and because it was impracticable to lease the prisoners, the industrial and commercial administration from 1790 to 1829 was actually conducted according to what is known as the "piece-price" form of the contract system. The contractors rather than the keeper furnished the raw materials, and the prisoners were paid a fixed amount for each unit of labor performed in sawing stone, weaving, dyeing, or shoemaking.² The following excerpt

¹ *Statutes at Large of Pennsylvania*, XIII, 516 ff.

² Lownes, *op. cit.*, pp. 14-15, 20; *Report of the Commissioners on the Penal Code*, 1828, pp. 52, 172-73, 179.

from the report of the inspectors of the Walnut Street Jail to the Commissioners on the Penal Code in 1826-27 gives a fair picture of the nature of the industrial administration which prevailed at this period:

The convicts are not allowed to work for their own benefit, although if they are industrious and healthy and have constant employment, they may have a balance to their credit in the accounts which are kept according to law with each convict. Instances have occurred, of considerable sums having been paid to convicts on their discharge from prison.

The employment of the prisoners depends entirely upon the wants of individuals unconnected with the institution. The inspectors, having no capital as a corporation, do not purchase the raw material in any case, except what is necessary for convicts' clothing. We have no agreements with persons employing the men, which can justly be construed into a contract. Farming the men out is not thought of, and it is scarcely practicable, from the nature of the occupations which are carried on. Stone in blocks, from the quarry, is sent to us to be sawed, for which we receive 18 and 20 cents per foot. Yarn is sent to be dyed and worked into cloth, for which we receive 6 cents per yard; and in no case is there any agreement but that the prices shall not be raised without due notice.¹

The industrial administration of the penal institutions of Pennsylvania since the establishment of the state penitentiaries can best be interpreted after a brief review of the prevailing tendencies in this field in the country at large. In the earliest period of prison industry sales of prison-made products were difficult because there was no well-established connection between the prison shops and the customers outside. With the rise of the "merchant capitalist" in this country in the period following 1825, this deficiency of the earlier period was remedied and an intermediary was found who was only too glad to furnish raw materials and take the finished product at an agreed-upon rate. The merchant capitalist usually employed the piece-price system of contracting for prison labor, but in some cases he carried the process one step farther and leased the labor of the prisoners outright during the working-day and assumed full control and direction of their labor. The system of contract convict labor, then, was but one incident in the rise of the merchant capitalist. Home

¹ *Ibid.*, pp. 172, 179.

labor and the "sweat-shop" were other phases of his attempt to secure cheap labor.¹

While contracting for the labor or the product of the labor of prisoners became well-nigh universal in this country from 1835 to 1885, the Eastern Penitentiary remained wholly aloof from this prevailing tendency, and the history of its methods of industrial control and administration is chiefly interesting by way of contrast with the prevailing practices. Nor were prisoners ever congregated in shops in this institution until after 1913. The general and practically universal method of industrial administration in the Eastern Penitentiary was the complete management and control of the labor of the convicts by the prison authorities. They purchased the raw materials, supervised the industrial operations, and sold the products in the open market. In this way they maintained almost a pure example of the public-account system. Only in rare instances did the authorities yield to temptation and make some concessions to the piece-price type of the contract system, and never have any inmates of the Eastern Penitentiary been leased to contractors. The explanation of this unusual exception to the prevailing practices must be sought not only in the ethical and penological theories of the governing authorities of the penitentiary, but also in the limitations imposed by the Pennsylvania system of separate confinement of prisoners. This would not permit the congregation of prisoners in shops, and the extra burdens and difficulties imposed by the necessity of inspecting and directing the labor of hundreds of prisoners in separate cells were greater than the merchant capitalist cared to assume when most other penal institutions welcomed the congregate workshop and the contract system. The following citations from the *Annual Reports of the Inspectors of the Eastern Penitentiary* indicate the main arguments advanced in support of their procedure. They were, in most cases, written by Richard Vaux, the most persistent and enthusiastic champion that the Pennsylvania system produced. Whatever one may think of the other aspects of the general argument, the satisfaction expressed over the unremunerative aspects

¹ See the admirable summary of this phase of prison labor by Edward B. Mittelman, in J. R. Commons, *A History of Labour in the United States*, I, 344 ff.

of the Pennsylvania system must probably be looked upon as evidence of "psychic compensation" and secondary rationalization.

The labor of convicts here is not farmed out as in some State Penitentiaries. This course is open to many objections. It is not perceived that any advantage can result to the prisoner or the institution. The prison authorities, by the operation of this plan, have a divided duty. They are bound to the contractor for the labor he exacts for his *per diem* paid for each convict. This is the most important interest. The care of, and the discipline, and the reformatory influences which ought to be faithfully exerted for the benefit of the convict, as well as of society, being less palpable when in contrast with revenue, it might most naturally happen the contractor is favored to the detriment of the convict. . . .

Conscious of being a convict, associated in common with others like themselves, degraded as far as a knowledge that their condition is participated in by their fellow prisoners can degrade, and feeling that their labor is sold in advance of its performance; an involuntary service exacted during an involuntary servitude; every impulse to reform is crushed, and every effort to regain a lost position in society is destroyed. Convicts in congregation may produce a paying productiveness from their prison pursuits, and yet result in the worst economy for the Commonwealth. That State has little to boast of, when it rejoices that its penal institutions are remunerative.¹

Taking the best view of this convict labor in its profitmaking, self-supporting aspect, it is simply to be thus stated: an individual commits crime, is convicted, his physical capacity to toil is sold to a contractor who becomes the partner of the State in the manufacture of certain products, and from the sale of these products the State gets part of the profit, the contractor a part of the profit; while the outside free laborer is paid as low a price for his free time and capacity, as his employer can afford, to come into competition with the State as a manufacturer. This is called punishment of the convict for his crime.²

In the administration of the discipline here, no one but the regular officers of the prison teaches trades, superintends the labor, or has care of the prisoners. The labor of the prisoners is used only for the manufacture of goods which are sold in the open market, and command from the trades a price, by reason of the care used in securing the best work. Underselling the market is not permitted, so that no general industry suffers from a reckless competition.³

The authorities of the Eastern Penitentiary have since 1852 endeavored to stimulate the industrial activity of the convicts by distributing to them in money one-half of the profit from their

¹ *Annual Report of the Inspectors of the Eastern Penitentiary*, 1855, pp. 8-9.

² *Ibid.*, 1879, p. 76.

³ *Ibid.*, 1883, p. 103.

labor, as measured by the difference between the cost of their maintenance and the revenue from their work. This amount has varied, reaching its high point in 1915, when \$19,743 was assigned to the convicts on this basis.

Little detailed information exists as to the industrial administration of the Western Penitentiary before the Civil War, but from what is available it is apparent that both the public-account system and the piece-price variety of the contract system were employed.¹ In 1866 and 1867 the inspectors of the institution, realizing that a revolution had taken place in American industry, strongly urged the abolition of the cellular employment and the introduction of congregate shops. This was permitted by an act of April 8, 1869, and the first shops were opened in 1873. The pendulum soon swung to the opposite extreme, and in 1873 the institution adopted one of the most exceptionable types of the contract system, namely the hiring of the labor of the prisoners by outside contractors. This change was hailed by the inspectors as "the great and crowning feature of our success in the department of labor."² The institution retained, however, complete control over the discipline and care of the convicts leased for industrial purposes.³ In their *Report* for 1874 the inspectors set forth the following justification of their innovations in industrial administration:

The advantages of this system to the state are numerous: There is no capital required to carry on the manufacturing business; the responsibility of purchasing raw material and disposing of the manufactured goods is obviated; the fluctuations of trade, decline in prices, carrying over unsold and unsaleable goods, the risks incident to the credit system, and the trouble and expense of hunting up customers and consumers for manufactured work, are all escaped. We supply our daily work and receive our compensation therefor.⁴

In their *Report* for 1877 the inspectors of the Western Penitentiary presented their arguments against the public-account system in a comprehensive fashion. This attitude contrasts sharply with

¹ *Report of the Inspectors of the Western Penitentiary*, 1837; *ibid.*, 1838; *House Journal*, II, 439; *ibid.*, 1838, II, 248.

² *Report of the Inspectors of the Western Penitentiary*, 1873, pp. 9, 23-24.

³ *Ibid.*, 1874, pp. 6-7.

⁴ *Ibid.*, 1874, pp. 17-18.

the denunciations of the contract system by the officials of the Eastern Penitentiary which have been cited above.

We object to working on State account for the following reasons:

1st. The Commonwealth cannot ordinarily become a successful manufacturer. It is impossible to avoid waste and extravagance when there is an exhaustless fund to meet deficiencies.

2nd. It is an extremely rare occurrence to find any one man, in whom are combined the proper qualifications that would enable him to superintend the mechanical operations of the shop, economically and judiciously purchase the raw material, and wisely and safely dispose of the products, and at the same time to control the disciplinary features of the prison. Either department is sufficient for any one man.

3rd. The capital required of the State for machinery, stock, &c., to work the different branches in this Institution would not be less than \$200,000, and the probability is that it would be exhausted every five or ten years.

4th. It would require a place of business in the city to dispose of manufactured goods (thus coming in direct conflict with outside competition), besides requiring a host of salesmen to find customers and a market for the products.

5th. It would oblige us to run the risk of periodical shrinkage in the value of stock, the wear and tear of machinery, and the constantly recurring losses in bad debts and depreciation in unsold and unsaleable goods.

6th. On the other hand, by adopting the contract system we avoid all risks of losses in machinery, stock and bad debts, the perplexities of buying, manufacturing and selling, and the unpleasantness of coming in conflict with the outside world engaged in a like business.

7th. And what is the most important of all, we retain control of "our convict." We direct his movements, his labor, his health, his food, his behavior, his prison rights and sanitary regulations. As on a solid rock the Inspectors place themselves upon the contract. They stand between the contractor and the convict; and while, on the one hand, they require obedience and faithful labor from the unwilling subject; on the other they insist upon courteous treatment and gentlemanly civility from the contractors and their subordinates.¹

In spite of these considerations, the legislature yielded to the demands of organized labor, and an act of June 13, 1883, abolished the contract system and introduced the public-account system. This prevailed, with additional limitations after 1897, until an act of June 1, 1915, established the state-use system. The laws passed following March 30, 1911, which have allowed the employment of the inmates of the Western Penitentiary in the erection

¹ *Ibid.*, 1877, pp. 9-10.

of the new penitentiary at Rockview, have for all practical purposes introduced a limited form of the public-works-and-ways system. The Western Penitentiary has, then, in the history of its systems of industrial administration illustrated all the great historic modes of controlling and directing convict labor. The great farm which has been purchased and is being operated at the new Rockview site in Center County also makes it certain that the institution will become a pioneer in the new trend toward outdoor labor and agricultural pursuits as the most approved method of furnishing healthful and remunerative employment for prisoners.¹

The Western Penitentiary was for a time even more liberal than the Eastern in its financial reward to industrious convicts. From 1870 to 1888 it assigned to the prisoners the whole excess of their product over the cost of maintenance. The largest amount thus distributed was \$19,567 in 1884.

5. STATE RESTRICTION OF PRISON LABOR

From the very period of its origin convict labor has been opposed by free labor. As early as 1823, at the very time when the Auburn system was first coming into existence, the mechanics of New York City protested against the alleged menace of convict labor.

Your memorialists have seen the convicts imperfectly educated in various trades, hired out to individuals, in some instances at reduced compensation, and in others employed for the benefit of the state, and the products of their labour thrown into market and disposed of at a price very little above the cost of materials of which they were manufactured, to the ruin of free mechanics.²

The opposition of free labor to convict labor did not abate, and the only reason that it was unable to effect any particular change in the methods of convict labor until the seventies and eighties was that labor organizations had not become powerful enough until that time to exert much pressure in either an economic or a political way.³

¹ *Report of the New Western Penitentiary from Its Inception to August 31, 1916*, pp. 5-16.

² Commons, *op. cit.*, I, 155.

³ For references to the early history of this conflict, see Commons, *op. cit.*, 282, 367-70, 431-32, 443, 459-60, 492; II, 33-37, 85 ff., 196 ff., 243, 351, 462-63, 488-93.

With the rise of the *Knights of Labor*, following 1869, and of the *American Federation of Labor*, after 1885, the free laborers were provided with organizations of sufficient size and coherence to exert some adequate influence on economics and politics. From 1880 to the present time a steady fight has been kept up by labor and its political agents and allies, until at the present time contract convict labor has been abolished in more than one-half of the states of the Union. The tendency has been to substitute for the contract system the public-account and the state-use systems. To some degree the success which labor has met in abolishing contract convict labor has been due to the political exploitation of the labor vote by politicians who felt that they might readily concede this insignificant demand and thereby divert labor from vigorous demands for more vital liberal policies. The whole issue of convict labor has nowhere been more judiciously summarized than in the following citation from Carroll D. Wright:

In the many investigations which have been made in relation to the prison labour question, few instances have been found where prices have been affected in the least, and rarely a case where wages have been lowered in consequence of the employment of convicts in productive industry. Nevertheless, the moral effect of the supposed competition, and of whatever real competition may have occurred, has been sufficient to create a demand in nearly all of the States of the Union for some regulation of the employment of convicts under which competition can be entirely or largely removed, and for the last twenty years or more political platforms have often contained a paradoxical plank demanding that convicts should be employed, not only as a matter of health, but as a source of revenue to the state, but in such a way as to relieve honest industry of competition. It is an absolute impossibility to prevent competition if convicts are to be employed in any way whatever. It must be admitted by all sane men that they should be employed and constantly employed upon intelligent labour. The problem, therefore, so far as the economics of the question is concerned, is either to reduce the competition to the lowest point or to manufacture goods in such a way and under such conditions that prices and wages can in no sense be affected. This is the whole of the economic side of the question from the productive point of view.¹

By a curious irony of fate, Pennsylvania, which was the pioneer in prison labor both in the world at large and in the United States, has had the most disastrous experience of any state in this violent

¹ *An Outline of Practical Sociology*, pp. 380-81.

reaction against convict labor and toward the enforced idleness of prisoners.¹ Down to the year 1883 the state interfered in no way with the mode of utilizing and administering the labor of prisoners, but since that date it has stepped in to regulate prison labor in a progressively more rigorous manner, until it succeeded in paralyzing the industrial systems of the state penitentiaries. The vigor in this direction may be in part explained by the early and thorough industrial development of Pennsylvania and the particular strength of the first powerful labor unions in that state.

The first important victory of the labor element in their struggle against convict labor in Pennsylvania came in the act of June 13, 1883, which abolished contract labor in all state and county penal institutions. The act decreed that the convicts were to be employed "in behalf of the State," but the method actually introduced was the public-account rather than the state-use system.² The act had no effect on the Eastern Penitentiary where no contract labor had been employed, but it totally disrupted the industrial system of the Western Penitentiary. Another act of June 20, 1883, decreed that all goods made in any penal institution in the state should be marked with the words "convict made" and the name of the institution manufacturing them. Only goods made for shipment outside of the state were exempted from the operation of this law.³ In 1891 the eight-hour day, which had been a vital phase of the program of the new national labor organizations, was introduced into all the penal institutions of Pennsylvania.⁴ Prison labor in Pennsylvania could very well have withstood the restriction imposed by the laws of 1883 and 1891, which certainly provided for the elimination of most of the possible abuses in prison labor, but neither politicians nor labor agitators were willing to stop at this point. The high-water mark of state interference with convict labor was reached in the act of April 18, 1897. This law was probably the most disastrous and ill-conceived in the whole history of a type of legislation conspicuous

¹ Cf. L. N. Robinson, *Employment and Compensation of Prisoners in Pennsylvania*, 1915, pp. 59, 63.

² *Laws of the General Assembly*, 1883, p. 112.

³ *Ibid.*, p. 125.

⁴ *Ibid.*, 1891, p. 100.

for shortsightedness and lack of understanding of those deeper problems involved, which Colonel Wright describes in the above-cited passage. It ended for the time being all hope of a just and equitable solution of the problem of convict labor in such a way as to conserve the interests of labor, the commonwealth, and the prisoners. The act ordered

That, from and after the passage of this Act, no warden, superintendent, or other officer of any State prison, penitentiary, or State reformatory, having control of the employment of the inmates of said institution, shall employ more than five per cent of the whole number of inmates of said institution in the manufacture of brooms and brushes and hollow-ware, or ten per cent in the manufacture of any other kind of goods, wares, articles or things that are manufactured elsewhere in the State except mats and matting, in the manufacture of which twenty per cent of the whole number of inmates may be employed: Provided, That this Act shall not apply to goods manufactured for the use of inmates of such institutions.

That no machine operated by steam, electricity, hydraulic force, compressed air, or other power, except machines operated by hand or foot power, shall be used in any of the said institutions in the manufacture of any goods, wares, articles or things that are manufactured elsewhere in the State.¹

As if to make the effect of this law still more pernicious, the Attorney-general of the state rendered an opinion that the law meant that either 5, 10, or 20 per cent might be employed, but never the maximum of 35 per cent of the inmates.² From that date until the present prison labor has been a farce and a misnomer in Pennsylvania. According to the statistics gathered by an investigator in 1909, out of the 2,900 idle able-bodied prisoners in the entire United States, no less than 2,073 were listed as being in Pennsylvania. Yet penologists unite in agreeing that the chief evil of unemployment is not economic loss so much as disciplinary and reformative deterioration. It is impossible to state in any quantitative way the volume and diversity of evils in prison administration and personal suffering which have flowed from this deplorable law. Thousands of men have been compelled to spend months and years at a time in complete idleness in their cells.

¹ *Laws of the General Assembly*, 1897, pp. 170-71. It should be noted that this law not only broke up the industrial system, but also attempted to force the industries back into the handicraft stage of industrial technique.

² *Report of the Inspectors of the Western Penitentiary*, 1897-98, pp. 8-9.

No adequate physical exercise has been possible, and opportunities for moral and intellectual improvement have scarcely existed. Only those who have, as penal administrators or investigators, observed a thousand convicts existing in more or less complete idleness can comprehend the effects of such a condition in producing general physical, mental, and moral deterioration, as well as creating an unnecessarily large economic burden on the finances of the state.

In the period following 1909 have come a series of reforms in penology in Pennsylvania equaled only by the achievements between 1786 and 1792 or between 1818 and 1829. It was inevitable that the intolerable condition of prison labor and industry should be one of the first matters to engage the attention of all progressive reformers. An act of July 25, 1913, authorized the governor to appoint a commission to prepare recommendations looking forward to the re-establishment of some systematic prison industry in the state.¹ The commission submitted a brief but comprehensive report on February 15, 1915.² In addition to more general information, it contained a brief history of prison industry in Pennsylvania, a vigorous criticism of existing conditions, and the following recommendations for future improvement:

The employment under the State-Use system of the Inmates of the Eastern Penitentiary, the Western Penitentiary and the Pennsylvania Industrial Reformatory at Huntingdon.

The administrative machinery necessary for the introduction of the State-Use system in these three institutions.

The purchase of a moderate sized farm to be used in connection with the Eastern Penitentiary.

An opportunity for the counties to employ the inmates of the jails, work-houses, houses of correction, etc., in the production of goods for the use of county institutions or the inmates thereof.

The creation of six industrial farms for misdemeanants and the employment and compensation of the inmates.

A modification of the existing wage system in so far as it applies to the Eastern Penitentiary, the Western Penitentiary and the Huntingdon Reformatory.³

¹ *Report of the Penal Commission on the Employment and Compensation of Prisoners*, February 15, 1915, p. 8.

² *Ibid.*, *passim*.

³ *Ibid.*, p. 27.

Following out the recommendations of the commission, an act was passed on June 1, 1915, which embodied the more important suggestions of the commission. It ordered the introduction of the state-use system for all able-bodied prisoners and created a "Prison Labor Commission" to supervise the administration of the new system of industry.¹ The immediate results of the law were not as satisfactory as had been hoped. It caused the disruption of the little industry which then existed and was not successful in providing state-use industries in their place. The chief defect of the act was that it imposed no obligation upon public institutions to purchase or give preferential bids on prison-made goods, thus failing to insure any market for them. This fatal shortcoming has been well summarized by Mr. Albert H. Votaw:

These laws must be reinforced by additional legislation before they become very effective. There is not any obligation on the part of any prison board to institute these industries. They merely have the privilege of furnishing employment. And unless there is some market to which they may look with reasonable certainty for the disposal of products, there is little or no encouragement to establish these industries. No prison board will be inclined to establish a furniture manufactory unless there shall be a call for the furniture. The Mayor of Buffalo cannot order a desk or a chair for his room unless he has first made a requisition on the manager of prison products in the State of New York. If the prisons make what is desired, he is under obligation to purchase from them. If he purchases furniture elsewhere the controller will not honor the bill unless accompanied by a letter from the sales manager of prison products that such articles are not in stock. We must have some such system in this State before there will be any successful operation of the laws on this subject.²

Though the situation as to employment in penal institutions in Pennsylvania in 1919 was worse than in 1915, it cannot be denied that the act of 1915 marks a real step in advance and opens the way for a restitution of the industrial efficiency for which the Pennsylvania penal institutions were once justly noted. The disastrous immediate results have arisen in part from the difficulties inherent in a transition from one system to another. The only legislation which has thus far actually relieved the unemployment

¹ *Acts of the General Assembly*, 1915, pp. 656 ff.

² *Penal Legislation in Pennsylvania*, 1915, pp. 12-13.

situation has been that authorizing the employment of prisoners in constructing the new penitentiary at Rockview and in cultivating the great farm connected with that institution. What is needed is to strengthen the law of 1915 by making it compulsory for state institutions to purchase prison-made goods when they are needed, to get the inmates of the Western Penitentiary removed to the great prison farm at Rockview, to establish a prison farm for inmates of the Eastern Penitentiary, and to secure more extensive use of convicts on highways and public works.¹

In the Pennsylvania Reformatory at Huntingdon there has been an interesting development in another direction. This institution, primarily for the younger adult first offenders, has established the most elaborate trade school to be found in any such institution in the country. As it has been impossible to manufacture for sale on any large scale, the work has been of educational rather than of economic significance, thus making the institution stand at the opposite extreme from such a reformatory as that at Rahway, New Jersey, where manufacturing productivity is mainly stressed, though not divorced from technical training.

6. THE SYSTEM OF MAINTENANCE IN PENNSYLVANIA PENAL INSTITUTIONS

A review of the systems of maintenance and accounting in the state penitentiaries is interesting as illustrating the continuity from the period of the formation of state penal institutions and the persistence of county independence and autonomy, which was so noticeable in the Colonial period.² The method of providing support for the state penitentiaries rests in a historical sense upon the act of May 27, 1789. It was therein provided that any prisoners sentenced to more than twelve months imprisonment in any county in the state might be sent to the Philadelphia Jail on Walnut Street. The cost of maintaining that institution was to be divided between Philadelphia and other counties in proportion

¹ Some improvement may be expected to result from the comprehensive act of 1921 reorganizing the administration of the penal and charitable institutions of the state. See *The Prison Journal*, July, 1921.

² George Elliot Howard, *Local Constitutional History of the United States*, p. 383.

to the number of convicts sent from each county. Philadelphia County was to receive in addition £100 for the extra expense of administering the Walnut Street Jail. In case the profit from the labor of prisoners exceeded the cost of maintenance, the excess was to be divided among the counties in proportion to the number of their convicts in the institution.¹ This same general arrangement was continued by the act of April 5, 1790.²

When the two state penitentiary districts were organized in Pennsylvania by the act of April 10, 1826, it was provided that the expense of maintaining the prisoners in each district should fall upon the counties in the district.³ All earlier regulations, however, were superseded by the act of April 23, 1829, which has, with only minor modifications, governed the maintenance systems of the state penitentiaries from 1829 to the present day.⁴ This act was, however, based upon the general premises and precedents established by those of 1789, 1790, and 1826. Expenses for maintenance were to be borne by the counties, while the state was to pay the salaries of prison officials. This act of 1829 has remained in force to the present day, modified only by unimportant minor amendments. While it was not the object of special legislation, it has become a part of fixed precedent that the state, in addition to paying salaries, shall make appropriations for all important alterations and additions to the penitentiary buildings and for all extraordinary and unusual expenditures.

This method of dividing the cost of maintaining and administering the state penal institutions between the state and the counties differs from the system used in the majority of the eastern states, where the county has never had the importance that it has retained in Pennsylvania and developed in western states. In other eastern states the total expense of conducting the penal institutions of the state is normally borne by the state and raised as a part of the

¹ *The Statutes at Large of Pennsylvania*, XIII, 246, 250-51.

² *Ibid.*, p. 527.

³ *Acts of the General Assembly*, 1825-26, pp. 280-81.

⁴ *Laws of the General Assembly*, 1828-29, pp. 341 ff; Richard Vaux, *Sketch of the Origin and History of the Eastern Penitentiary*, pp. 36-51; *Acts of the Assembly Relating to the Eastern Penitentiary*, pp. 46-47.

state tax. The method in Pennsylvania is, perhaps, more equitable, in that counties pay in proportion to the number of convicts that each sends to the state penitentiary in its district; but this advantage is to some degree offset by the added burdens and confusion of several systems of accounting and by the fact that in cases where the state is for one reason or another delinquent or deficient in its allowances to the penitentiary the deficiency has to be met by the counties.

A review of the financial history of the state penitentiaries does not present a cheerful picture.¹ In the decade of the forties and in a few years since, the Western Penitentiary earned enough through prison labor slightly to exceed the cost of maintenance exclusive of salaries. With the possible exception of the year 1864, this institution has never equaled through its earnings the combined cost of maintenance and salaries, and since 1864 it has never earned even approximately an amount equal to the maintenance expenses, to say nothing of the ever growing salary list. Never in its history has the Eastern Penitentiary failed to be a burden upon both the state and the counties, having never earned

¹ The following statistics will give some indication of the financial loss sustained in operating the state penitentiaries.

| YEAR | APPROPRIATION BY STATE FOR SALARIES | DEFICIT CHARGE TO COUNTIES FOR FOOD AND CLOTHING NOT MET BY REVENUE FROM PRISON INDUSTRY |
|----------------------|--|---|
| Eastern Penitentiary | | |
| 1852..... | \$ 8,000 | \$ 12,011 |
| 1862..... | 12,800 | 11,350 |
| 1872..... | 27,000 | 53,400 |
| 1882..... | 38,925 | 26,521 |
| 1892..... | 47,000 | 79,267 |
| 1902..... | 81,950 | 71,948 |
| 1912..... | 101,235 | 95,905 |
| 1917..... | 104,208 | 213,033 |
| Western Penitentiary | | |
| 1852..... | \$ 6,000 | \$ 751 (gain) |
| 1862..... | 12,000 | 2,530 |
| 1872..... | 22,450 | 50,530 |
| 1882..... | 35,000 | 27,633 |
| 1892..... | 60,000 | 79,267 |
| 1902..... | 64,150 | 75,890 |
| 1912..... | 122,528 | 88,114 |
| 1916..... | 165,062 | 199,953 |

enough in any year to equal the cost of feeding and clothing the convicts. While the earnings of the Western Penitentiary increased to a notable degree under the congregate system, they did not increase as rapidly as did the cost of maintenance. But without entering upon the disputed question of the relative economic standing of the Pennsylvania as compared with the Auburn and Irish systems, it cannot be denied that the state penitentiaries of Pennsylvania have been a real burden upon both state and counties, particularly in the period since the Civil War.¹ No extenuating circumstances or compensation of educational or reformatory advantages can be claimed in the way of offsetting this economic load, as is the case with the Huntingdon Reformatory. No attempt has been made to provide vocational instruction, and both convicts and prison authorities have generally united in the contention that the life of disintegrating and enforced idleness leaves the convict worse at discharge than upon reception. Finally, it should be noted that the economic burden imposed by low earnings and a high maintenance cost was never relatively as great as it is at the present day. The chief explanation of this is of course the restrictive labor legislation dealt with above and the failure to remedy the situation adequately by the law of 1915.

7. SUMMARY

As this article is in itself little more than a summary of leading facts and tendencies in the economics of Pennsylvania penology, no formal summary is necessary. It should have made clear the intimate relation between the larger phases of the economic development of penal administration and the economic progress of the country as a whole. The industrial phases of American penology cannot be interpreted aright without a knowledge of the underlying tendencies in economic history and the principles of economics. Technology, organization of industry, labor policies, and systems of maintenance are all inseparably bound up with economic history and doctrine. The greatest weaknesses of economic penology, as well exemplified by the history of the Eastern Penitentiary, have

¹ See Richard Vaux, *op. cit.*, p. 125, for an attempt to prove the Pennsylvania system more economical than the Auburn system. His effort does not carry conviction.

been exhibited when penal institutions have departed or held aloof from prevailing economic tendencies or sound economic principles. It is equally evident that the science of economics should include within the scope of its interests and investigation the economic phases of penology. There can be no hope for a sound penology which is not built upon an adequate material foundation, and this can be guaranteed only by an injection of valid economic principles into penal administration. The divorcing of penology from economics has been attended with disastrous results. No sound economic doctrine would have sanctioned either the excesses of the attack of labor organizations upon convict labor or the capitulation of legislators to this assault. Nor could one expect an economist to sanction a law which looked forward to the provision of a supply of a definite type of commodities without insuring the possibility of an adequate demand for them. Finally, the problems of reformation, economic or technical education, after-care of discharged convicts, the relation between criminality and economic pressure, the support of relatives of convicts, and restitution to injured parties are matters which fall within the province of the welfare economist.

HARRY ELMER BARNES

CLARK UNIVERSITY